Crl. 2543/98

CF0000059813

D3 (Cr.)

199

S.T.No. 220/97

APPEAL PRISONER

No. 70/98 Name पोयामी सोमडु (2)

Father's Name हिड़मा Resident ग्रा. मिन्चनार थाना- लोहंडीगुड़ा जगदलपुर (म.प्र.)

Age २५वर्ष Sentenced to आजीवन कठोरावास on २२/७/९८

Under Section ३०२/भादवि by विशेष न्यायालय जगदलपुर जगदलपुर (म.प्र.)

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :-
2. Date of which copy received :- २२/७/९८
3. Date on which appeal sent :- ७/९८
4. Whether the prisoner wished to be represented or not :- Yes / No.

No. ७०/९८ Name पोयामी सोमडु s/o हिड़मा

Continued in सर्किल Jail जगदलपुर

No. ९६१/अपील/९८ Dated ८/८/९८

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर (म.प्र.) together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
केन्द्रीय जेल जगदलपुर

Superintendent-Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office. 7-8-९८

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. २५ dated १०-८-९८

Forwarded to the माननीय उच्च न्यायालय जबलपुर

ए० के० श्रीवास्तव
मुख्य न्यायिक मजिस्ट्रेट, जगदलपुर

C. R. MAGISTRATE

Date of receipt in Applieate Court

(113)

XI-HC-78

मामला क्रमांक Cr.App.2543/98 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -
Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ.

14.9.2006

Mr. R.K. Jain, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. D.K. Gwalre, Dy. Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction & order of sentence dated 22nd July, 1998 passed by learned Special Judge, Jagdalpur in S.T. No. 220/97, whereby learned Special Judge after holding the accused/appellant guilty for commission of offence under Section 302 of I.P.C. for committing murder of his cousin namely Jhimtu, sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that on 16th March, 1997 at about 7.00 p.m. accused/appellant Poyami Somdu assaulted deceased Jhimtu with the stone, who was cousin of the accused, and thereafter, the accused/appellant came to Madvi Sukda (PW-4) and made extra judicial confession before him that in the Michnaar market he has committed murder of Jhimtu by attacking him with a stone on his head. Madvi Sukda (PW-4) took him to Bhursu (PW-3) before whom also the accused made extra judicial confession and thereafter Sukda informed Poyami Mudo, son of deceased, who gave merg intimation (Ex.P-1) on 17.3.1997 and based on that F.I.R. (Ex.P-2) was registered for commission of offence under Section 302 of the IPC.

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 2543/98 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The Investigating Officer left for the place of occurrence and after giving notice to the Panchas prepared the Panchanama (Ex.P-3) of the dead body of deceased. Dead body of deceased was sent for postmortem examination to the Primary Health Centre, Lohandi-gunda, where Dr. Virendra Singh (PW-6) conducted the post mortem examination and prepared the postmortem report (Ex.P-1). The doctor noticed four injuries on the head of deceased and opined that death was homicidal in nature and due to head injuries. During investigation, while in police custody accused/appellant gave memorandum (Ex.P-5) and in pursuance of that the stone, weapon of offence was taken into possession under Ex.P-6 and the same was sent to the doctor for its examination.

After completion of usual investigation, charge sheet was filed against the accused/appellant in the Court of learned Additional Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to learned Sessions Judge, Jagdalpur, from where learned Special Judge, Jagdalpur received the case on transfer for trial.

The prosecution in order to establish the charge against the accused/appellant examined 6 witnesses. On the other hand, statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing in the prosecution evidence against him and stated that he is innocent and has been falsely implicated in the crime.

Learned Special Judge, after hearing the arguments of learned Additional Public Prosecutor for the State and learned counsel for the accused, convicted and sentenced the accused/appellant herein as mentioned in para 1 of this judgment.

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.2543/98 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard Mr. Jain, Adv. for the appellant and Mr. Deo, Addl. Public Prosecutor with Mr. Gwalre, Dy. G.A. for the State.

Homicidal death of Jhimtu has not been disputed by learned counsel for the accused/appellant. Apart from that, from the evidence of Madvi Sukda (PW-4) & Bhursu (PW-3) before whom the accused/appellant made extra judicial confession that he has committed murder of Jhimtu by attacking him with the stone and also from the medical evidence of Dr. Virendra Singh (PW-6) in which he has stated that he noticed four lacerated wounds on the head of deceased and the skull bone was found fractured, which was the cause for death of deceased Jhimtu, it is established that the death of Jhimtu was homicidal.

As far as involvement of accused/appellant in commission of crime under Section 302 of IPC is concerned, Madvi Sukda (PW-4) has categorically stated that he was at the residence, accused came to his house and made extra judicial confession before him that in Michnaar market he has committed murder of Jhimtu by attacking on his head with the stone. Bhursu (PW-3) has also stated that the accused made extra judicial confession before him that he has murdered Jhimtu. PW-2 Samaru has also stated that accused made extra judicial confession before him. In the cross-examination of these three witnesses, the defence has not been able to elicit any circumstance, which makes the evidence of these three witnesses untrustworthy or unreliable. Therefore, to this extent the involvement of the accused/appellant in commission of crime is established and we do not find any illegality or irregularity in the judgment of the trial court.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.2543/98 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the accused/appellant argued that on facts the offence under Section 302 of IPC was not made out against the accused/appellant, as the deceased was cousin of accused/appellant, on a small matter regarding ~~partition~~ share in of Mahua tree some quarrel started between the deceased & the accused and all of a sudden the accused picked up the stone and attacked the deceased.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

In order to appreciate the arguments advanced by learned counsel for the accused/appellant, we have perused the evidence available on record.

PW-2 Samaru, who is son of deceased Jhimtu, has admitted in his cross-examination that accused is his uncle & deceased was his father. Accused used to demand his share from his father in the Mahua tree and on account of that there was some dispute. PW-3 Bhursu in his cross examination has stated that it is correct to say that some quarrel took place between the accused and the deceased in the market in connection with the share in the Mahua tree and Jhimtu slapped the accused. The deceased and accused both have consumed 'Landa' (intoxicant substance).

Therefore, from the above evidence available on record, it is clear that the deceased was cousin of accused, accused was demanding his share in the Mahua tree and in that connection on the fateful day some quarrel took place between the two and in that process all of a sudden the accused picked up the stone and attacked on the head of deceased. There is nothing on the record to show that the accused attacked the deceased with a preplan or acted in an unusual or cruel manner, therefore, the case is squarely covered under

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA 2543/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Exception-IV of Section 300 of the IPC. As such, the offence under Section 302 of the IPC was not made out against the accused/appellant and the conviction & sentence under Section 302 of the IPC cannot be sustained.

In the result, the appeal is partly allowed, conviction and sentence imposed upon the accused/appellant under Section 302 of IPC are set aside and instead thereof, accused/appellant is convicted under Section 304 Part-II of IPC and sentenced to undergo R.I. for 7 years. It has been stated that accused/appellant is in detention since 20.3.1997 and thereby he has completed more than 9 years of sentence. It is therefore, directed that if the accused/appellant is not required in any other case, he be released forthwith.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

P.T.O.